

totaled. She advised that she and the deceased had started drinking the day before around 3:00pm and that they were drinking Listerine. She said they drank enough which mixed with her medications of ambien, zyprexa and lithium put her out. She advised that the two of them drank large bottles of Listerine, that the deceased usually drinks two of those bottles a day. She advised that the deceased did not have a driver's license and did not have any money. She advised the officer that she was drinking the night before when she talked on the phone with her son and then her mind went blank. She advised that she woke up the next morning and saw blood on the rug in the living room, she went back to the bedroom to find the deceased because she knew the blood on the rug was not her own blood. The deceased was not in the back bedroom so she checked the middle bedroom and the rest of the trailer and did not find the deceased. She opened the front door and saw him lying on his back. She advised the door was unlocked and the deceased was lying on the deck. His faced was turned with his right cheek showing and that it looked like the deceased had been hit. She said that she was not sure what he had been hit with. She knelt down and tried to shake him and thought he would wake up because she thought he had passed out; however, she then realized he had not passed out. She advised that the deceased passed out a lot and that she had found him on the floor many times. She testified that she did not know what had happened to him, whether he had fallen, passed out or what. She testified she called her son then his brother James Tom Roberson and then 911. She testified that when she called the deceased brother, she told him Sam is on the deck and he was dead. She told 911 that he was dead. She advised that 911 attempted to talk her through CPR and she advised them that it was too late he had been dead too long. That he apparently been dead a while. He was cold to the touch and

that she did not try CPR. She testified that she did try 15 beats to his chest but she did not do mouth to mouth because he had been dead too long. She advised that she waited for the police and the first responders and they instantly saw that it was too late to do anything. (T. Vol.2 pp.382-383) She advised that she had lived with the deceased a couple of weeks and was staying there until her car could be fixed. She advised that the two of them were just friends and had no romantic link between them. She had previously lived with her son at 475 Baxter Hughes Road before coming to the deceased residence. She advised that she and the deceased had gotten into an argument on Saturday and that was the only argument they had gotten into. That he got into her face and got crazy, that he came over and got on her. That he grabbed her shoulders and she hit him. She advised that she jumped up and hit him with her right fist, that was what had cause the bruising on her right wrist and at that time showed the officer the bruising and swelling on her right wrist. She advised that they both backed away from the confrontation and that the deceased's nose bled in the kitchen where she wiped the blood off the counter. (T. Vol.2 p.385) The officer testified that photographs marked State's Exhibits 23-26 accurately depicted the condition of the Defendant's wrist, hand and foot at the time that he interviewed her. (T. Vol.2 pp.386-387) The agent began an additional interview of the Defendant again with no Miranda warning at which time she advised that she now remembered what had happened the night before began to cry. She explained that the deceased was cursing her that but he came at her and she kicked him. She stated that she kicked him with her right foot hitting the right side of his head and face that must have been what turned his ear blue. She kicked him with her right foot while wearing heavy sandals which struck the right side of his head. She advised that she cleaned blood

off her right her sandal in the bathroom sink with a rag and threw it under the trailer because she was scared. She said that she passed out and the deceased was over her cursing her and saying "get your ragged ass out of here." That she remembered a back and forth scene in the kitchen in which the deceased came at her yelling. She drew a sketch of the interior of the trailer where the fight occurred which was attached to the investigative file marked State's Exhibit 27. (T. Vol.2 pp.389-390) She said this occurred in front of the chair and that she remembered the two of them were pushing back and forth in the kitchen but no one really delivered a blow. She advised that she woke up in the bed, stood up saw blood spots on the rug, she advised that she went to the room of the Defendant's mother saw that he was not there, then she checked the middle room and the bathroom and saw that he was not in either location. The front door was closed but not locked. She opened the door and saw the deceased lying on the porch and tried to wake him up, she thought he had passed out but he was cold. She advised that she changed clothes and washed her sandals before making the phone calls that she had figured out they got into again and did not want to be blamed. She advised that she changed her clothing because she saw blood on her shorts and on her t-shirt. She changed clothes in the living room and put the clothes with the blood on them in the suitcase, that there was blood spattered on both sandals which she cleaned. After she cleaned the sandals she placed them in a Marlboro bag and put them in the backseat of her Honda. (T. Vol.2 pp.392-394) When the officer asked "did you kill him" the Defendant responded "it was self defense. Sam attacked me last night just like Saturday." She advised that she would not hit him unprovoked and that she witnessed him choke Big Joe her ex-husband one time. She advised that Sam had an out of nowhere temper, that he had shown his temper the night before the incident

and on Saturday. She asked the officer if he was going to book her and charge her and he advised her not now, that he was simply attempting to find out what had happened. The officer testified that she stated "I know I did a wrong thing but, no, I didn't do a wrong thing. I haven't done anything wrong." "I drank too much and mixed my medication and got into a fight with Sam. Sam came after me and I kicked him in the head." "We were in a horrible fight that Sam provoked and it ended in tragedy one drunk killed another drunk." "I kicked him in the head to get him off me, it is possible I kicked him or hit him more than once because I was so drunk."

The officer testified that the Defendant stated when asked about the yellow rope lying on the deck close to the deceased, that "I didn't notice it. It might be under him. I don't think I pulled him out of the trailer because I am mentally and physically disabled.

I could have scooted him out but I don't remember. I do have back injuries." (T. Vol.2 pp.394-395) Later in the interview the officer stated that the Defendant told him "I kicked him and flailed him" which the Defendant described as multiple hits with quick movement like someone boxing. (T. Vol.2 p.397) The interview continued and went over various other aspects of what had occurred again and she advised the officer that on the evening in question she had drank most of a 16 ounce bottle of Listerine. They started drinking about 3 pm and stopped around 7 pm when she passed out. She advised that she woke up with the deceased yelling at her just like Saturday night when they had fought. She advised that she reacts very quickly because in the past there has been a lot of abuse where she has been hit. She advised that she had flashes of what had occurred. (T. Vol.2 pp.398-399) The interview was completed at approximately 4:25 on Thursday June 9, 2005 at which time investigator Green returned Gloria to the Avery County Sheriff's Department and called her son

to pick her up. He prepared a typed written synopsis of the interview that was marked State's Exhibit 28 allowed into evidence over the objection of Defendant's counsel. (T. Vol.2 pp.400-401) After he conducted another meeting on June 10, 2005 with the Defendant to speak with her and get scrapings from under her fingernails. This was after the autopsy had been performed which the agent attended. (T. Vol.2 p.402) He and Special Agent Van Williams, spoke to the Defendant, advised her they were there to get her consent to take fingernail scrapings. She advised him that she had scratched Sam Saturday night in their first altercation and that she may have something under her nails. That when she saw the deceased he had scratches on his neck that were from the first altercation on Saturday. She advised that the incidents were confusing because there were actually two fights. The Defendant signed a written consent which was marked as State's Exhibit 29 to allow the fingernail scrapings. (T. Vol.2 pp.403-405) The Defendant stated "Mark I lied one time. I did try suicide. I did try suicide when I thought I had ruined my son's life. Mark, now I have ruined my life it doesn't look good for me, does it?" At which point the officers left the cottage. The officers thereafter went to the Magistrate's office and obtained a warrant, returned and told the Defendant that they had a warrant for her arrest. According to the Agent she asked was the warrant for first degree of murder and was told by the officer it was a generic murder warrant that the degree would be decided at indictment. According to the Agent she said "what the hell. How about manslaughter? I had no forethought or malice. I have gone from a condo in Hawaii to a Listerine den in Newland. What a life." The officer advised that these statements were contained in his report marked as State's exhibit 30 which was introduced over the objection of Defendant's counsel. (T. Vol. 2.pp 408-410) On cross agent Sharpe

advised that when he first met with the Defendant on the 9th, he was advised that she was taking medication and that he did not check with anyone to determine what if any affect the medication would have. (T. Vol. 2 p. 412) the officer acknowledged that he had been in the Courtroom and had heard the Defendant's son testify and he observed his mother and she appeared dazed and out of it. That he had heard at least one of the officers who was at the scene say that the Defendant was rambling and repeated herself over and over. (T. Vol. 2 p. 413) The officer acknowledged that he did not give the Defendant her Miranda rights because she was never in custody when she was questioned. (T. Vol. 2 pp. 420-421) The officer acknowledged that at no time did he advise the Defendant of her Miranda rights and was not aware of any rule that prevented him from advising someone of their Miranda rights at any stage. He further advised that when he went back to arrest the Defendant he knew that a call had been made that she made saying that she was attempting suicide. He acknowledged that despite the fact that knew the Defendant had a mental illness, was an alcoholic, had threatened to kill herself just moments before he arrived to arrest her he still did not advise her of any constitutional rights. (T. Vol. 2 pp. 421-422) He advised that after the Defendant was arrested and she was advised of her Miranda Rights he sought to ask additional questions and at that point she advised that she would not speak to him again unless an attorney was present. (T. Vol.2 p.423) He acknowledged he did not use a recorder during any of the interviews with the Defendant and did not have the Defendant sign or read any of the statements. He indicated his report was a synopsis. (T. Vol.2 pp.424-425) The State called Dr. Brent Hall who is employed as regional forensic pathologist and medical examiner for the five counties expert in the field of forensic pathology. On June 9, 2005 he went to 528 West Brewer Road

in Avery County where he observed the deceased dead on the porch. He observed that there had been some trauma inflicted on the individual on his head and to his torso as well as extremities. An autopsy was performed on 6-10-05 at 8:15. The deceased was 68 inches tall and weighed 124 pounds. Dr. Hall testified that the deceased had died between 9 o'clock and 11 o'clock on June 8, 2005. The deceased had multiple hematomas and bruises to the head, body and extremities. The internal examination demonstrated fractures of the right lateral ribs four through eight which penetrated the wall surface of the chest resulting in some bleeding into the chest. (T. Vol.2 pp.451-453) Dr. Hall testified that approximately 650cc of blood was found in the abdominal cavity and that there was a laceration of the left lobe of the liver (T. Vol.2 p.453) During the examination of the head he found the skull to be intact; however, when the skull cap was removed there was a large subdural hematoma of the left right occipital region. (T. Vol.2 p.454) Based upon his observations Dr. Hall testified that the deceased died as a result of blunt trauma to the head and the abdomen. (T. Vol.2 p.455) Dr. Hall further testified that from the blood extracted from the blood extracted from the body it was determined that the alcohol concentration of the deceased was .28. (T. Vol.2 p.457) Dr. Hall prepared an autopsy report which the State introduced marked exhibit 41. (T. Vol. 2. P. 49) On cross Dr. Hall acknowledged that he could not determine the precise time of death nor could he tell us who caused the decease to die. He saw no patterned injuries that would link a particular instrument or object to the death of the deceased. (T. Vol. 2 p. 491) Dr. Hall also testified that a person who is a habitual user of alcohol bruises more readily than a person who doesn't use alcohol. Dr. Hall acknowledged that the subdural hematoma he observed could have been caused by the deceased hitting virtually

anything with his head hard enough including striking it against the table, falling back and hitting his head hard on the floor or failing forward and hitting the side of ones head. Dr. Hall further testified that the deceased suffer from coronary artery disease and one artery was eighty percent blocked and the other was seventy percent blocked which was significant. The deceased had cirrhosis and his blood alcohol was three and one half times the legal limit. (T. Vol. 3 pp. 506-507) On re-cross Dr. Hall acknowledged that he looked at the hands of the deceased and that there was significant bruising to the knuckles of the left hand which was consistent with someone who had hit someone or something hard enough to bruise the knuckles which was certainly not a defensive injury and was more consistent with an offensive injury. (T. Vol. 3 pp. 508-510)

The State called SBI Agent Van Williams, He responded to a call from Avery County and arrived at approximately 9:47am on June 9, 2005 to assist in a death investigate. He took photographs of Ms. Estes which are marked State's Exhibits 42 through 47. (T. Vol.3 pp. 527-598) He testified about his observation of the bruises on the Defendant and the blood stains he observed during his examination. (T. Vol.3 pp.529-534) He went to the crime scene took the pictures marked State's Exhibits 50 and 51. (T. Vol.3 pp.534-536) Detective Williams testified about his examination for blood within the trailer at various locations. (T. Vol.3 pp.538-543) He conducted a search of the house and took pictures which were marked State's exhibits 59 through 94 and he testified about his observations within the house. (T. Vol. 3 pp. 548-577) Williams testified that at the scene he observed State's Exhibit 95 which was the yellow rope underneath the victim's body when the body was rolled over. (T. Vol.3 p.581) He testified that he assisted in the taking of the fingernail scrapings of the Defendant which are depicted in State's Exhibits

100 and 101. (T. Vol.3 p.588) On cross Agent Williams acknowledged that he had taken other pictures of the Defendant which he had not shown to the jury. (T. Vol.3 pp.605-606) He observed bruising but could not tell what caused the bruise. (T. Vol.3 p.607) The officer acknowledged that the Defendant had serious bruising on both of her wrists. (T. Vol.3 p.618) Agent Williams acknowledged that with regard to all of the blood that he saw at each of the places testified about that he could not tell the jury when or how it got there nor did he know what caused any blood splatter. (T. Vol.3 pp.625-626) The officer testified he did not dust for any fingerprints nor did anyone else that he was aware of. (T. Vol.3 p.629) He testified that the pictures shown by defense counsel clearly portrayed the bruises on the Defendant which were not as clearly visible on the pictures introduced by the State. (T. Vol.3 pp.647-648) The State called SBI Agent McKenzie Dehaan, assigned to the crime laboratory as a forensic biologist who testified as an expert concerning the items that were sent to the lab by the various agents and provided a copy of her three laboratory reports marked State's Exhibits 142, 143, 144. (T. Vol.3 pp.652-663) On cross she acknowledged that she had no personal knowledge of when or how the blood samples came to be on the object. (T. Vol.3 pp.663-664) State called Timothy Baize a Special Agent with the State Bureau of Investigation Crime Lab who is employed as a Forensic DNA Analyst. (T. Vol.3 pp.664-665) The agent testified about his examination of the DNA profiles of the blood stains and other samples sent to the lab. (T. Vol.3 pp.668-677) On cross he testified he did not know what happened or who if anybody did anything. He did not know how old the blood samples were. He advised that no nail scrapings from the deceased were sent for examination. (T. Vol.3 pp.677-679) The officer explained he is simply saying that the deceased was not excluded. Likewise, the analysis of the DNA

on the door handle simply said that the Defendant was not excluded. (T. Vol.3 p.679) The State called SBI Agent Donald James Faggart, Jr., of the Crime Lab in Raleigh. He was to conduct a question footwear impression examination from a pair of sandals and pieces of flooring that were sent to him by the agency. (T. Vol.3 pp.682-683) The agent gave lengthy testimony about the tests on the samples provided; however, on cross he acknowledged he could not say whether they were the sandals or not. He acknowledged that finger prints from inside or outside the residence could have been examined if they had been taken. (T. Vol.3 p.694) Larry M. Huskins, Sr. who operated Huskins' Court and Cottages in Tynola, he testified that that had known the Defendant for several years and on June 9, 2005 she rented one of his rooms. (T. Vol.3 pp.698-699) A voir dire was conducted during which the witness testified that a statement was prepared by Agent Sharpe which he signed; however, no copy was provided to Defendant's counsel. The agent testified that he did not have a signed copy. The Court over the objection of the Defendant and allowed the unsigned statement into evidence. (T. Vol.3 pp.701-706) Mr. Huskins testified that the Defendant told him that she and the deceased had been drinking about two and half bottles of Listerine a day. She advised that they got into an argument; she kicked at him twice from a chair and made no statements about what happened next. The following day on Friday he had spoke with Ms. Estes again; however, she said nothing else about what occurred. She advised that she was bipolar and certified crazy. He testified that the SBI Agents talked to the Defendant after she had called her doctor about being committed. The State called Melissa Bishop. A voir dire was conducted concerning statements the Defendant had allegedly made to the witness during her incarceration which were highly prejudicial. The Court allowed the statement and testimony of Bishop to be presented to the jury.

(T. Vol.3 pp.713-744) Bishop testified on July 14, 2006, she had an opportunity to speak with Agent Sharpe while she was in jail for a probation violation. (T. Vol.3 pp.745-746) She contends the Defendant told her that Sammy was lying in the floor, blood coming out of his mouth so she drug him outside not to look at him, saying that she got rid of a brain dead drunk and that she relived the thing every day, daylight till dark. She advised she and the deceased had been drinking Listerine and that he had caught her sneaking and drinking some of his. That she was sitting in a chair and she kicked him while they were fighting over the Listerine. (T. Vol.3 p.747) She said nobody cared for Sammy and he was just low rent, lowlife and nobody would miss him. Bishop said that prior to speaking with the SBI she wrote the statement marked as State's Exhibit 154 which contained her signature at the bottom which she gave to a jailer. (T. Vol.3 p.748) Bishop acknowledged that she was convicted felon and that in the letter sent to the jailer did not contain one word concerning the deceased. (T. Vol.3 pp.753-754) She had been arrested for the possession of methamphetamine and was facing going to prison. (T. Vol.4 pp.762-763) The witness first testified that she never discussed a sentence reduction with the SBI Agent and later acknowledged that she had in fact discussed that issue. (T. Vol.4 pp.763-764) She was charged with assault on the Defendant on July 3, and sent the letter to the jailer on July 7. (T.Vol.4 pp.773-774) The State called Kristin Blair, another former inmate from the Avery County jail. A voir dire was conducted essentially along the same lines as the voir dire of Bishop. The Court overruled the Defendant's objection and allowed the testimony of Blair and her statement to be presented to the jury. (T. Vol.4 p.788) She said the Defendant told her she would squash Sam like a bug, that he was a drunk, that he didn't have any reason to be living when he was drunk and that

they had been in a fight previously three days before his death she had hit him. She stated that she had hit the deceased in the head and that he had a bloody nose and made no statement about his having tried to hit her. She said that he was a really small man, 110 pounds or so and that there was no way that he could hurt her. Blair testified that the Defendant talked about the case all the time. (T. Vol.4 pp.790-791) The Defendant allegedly told Blair that she tried to clean up the blood with oxi clean and peroxide using cloths which she stuffed under the trailer. (T. Vol.4 pp.791-793) The witness testified that the officers came to her and asked if she had heard anything or if anything had been said. On cross examination the witness testified that she had two children by two different men and was presently pregnant by a third person. That she had been arrested and charged with misdemeanor possession and that she had flunked a drug test and was placed back in jail. She knew that Sam's brother was head of probation and she had been on probation. He testified that the statements she signed were given to SBI Agent Sharpe and that she did not have a copy. (T. Vol.4 pp.799-800) Marty Keller was called as witness and testified that he told to the SBI Agent that if the Defendant had taken one of her pills that night within ten minutes she would be out cold. He testified that, contrary to the testimony of Bishop, he was present when Bishop made a statement to the Defendant's sister at the grocery store that she (Bishop) did not believe the Defendant was guilty of anything and that she was very adamant about that. He testified that Bishop had long standing drug problems and had used drugs for as long as he had known her. (T. Vol.4 pp.844-845) Bishop told both he and the Defendant's sister that she had been in jail with the Defendant and made no mention of any statements made by the Defendant about the record. In fact, she said she felt Gloria was innocent that she hadn't killed

the deceased. (T. Vol.4 pp.845-846) The State called Karen Elizabeth Shaw another former inmate in the Avery County jail. The Court conducted a voir dire and overruled the objection of defense counsel and allowed the witness to testify. (T. Vol.4 pp.848-859) Shaw testified that she lived in Newland and had previously lived in Tallahassee, Florida. She had been arrested for probation violation and while incarcerated at the Avery County jail allegedly spoke to the Defendant who was in a cell with her. She took notes pretending that she was writing her husband and kept the notes until she contacted law enforcement. She met with Agent Mark Sharpe on September 10, 2007 and disclosed to him what the Defendant had allegedly told her. (T. Vol.4 pp.862-863) She contends the Defendant told her that she and the deceased had been fighting for a couple of days initially over alcohol and later over her being at the trailer That she had hit him and he fell over with a nose bleed and urinated all over himself. (T. Vol.4 pp.865-866) That she began kicking him in the chest and kicked him until he was gasping and thought he was being melodramatic. She said she was going to squash him like a bug. The Defendant made derogatory remarks about the deceased. On cross she acknowledged that she had been charged with four felonies concerning identity theft and was convicted in Florida for grand theft, and placed on probation and electronic monitoring. She violated her probation, left the State of Florida and came to North Carolina. Shaw testified that she initially did not have a bond. While in custody with the Defendant she saw bits and pieces of the autopsy report and statements that the Defendant had. (T. Vol.4 p.887) She admitted that Kristin told her that she had talked with the SBI thereafter saw her leave the jail cell. (T. Vol.4 p. 888) She acknowledged that when she spoke with Agent Sharpe she told him that she would like to have her probation transferred from Florida to

North Carolina. When handed a copy of statement she acknowledged that at the bottom of the statement it said " Shaw told S.A. Sharpe that she had an agenda for given this statement" (T.Vol.4 p.889) She acknowledged that after giving her statement she was given a bond within a week and a half after giving her statement. (T. Vol.4 p.892) At the close of the State's case Defendant through counsel made a Motion to Dismiss the charge of first degree murder which was denied. (T. Vol.4 p.897) Defendant's counsel renewed all previous motions made during the course of trial and made a Motion for Mistrial all of which were denied. (T. Vol.4 p.898) The Defendant elected not to testify or present evidence and was examined by the Court concerning her decision. (T. Vol.4 pp.903-907) At the close of all the evidence the Defendant renewed all previous motions which were again denied. (T. Vol.4 pp.909-910)

ISSUE

1. THE TRIAL COURT COMMITTED PREJUDICIAL ERROR BY ALLOWING HIGHLY PREJUDICIAL EVIDENCE IN THE FORM OF TESTIMONY AND EXHIBITS TO BE PRESENTED TO THE JURY OVER THE DEFENDANT'S OBJECTION.

ASSIGNMENT OF ERROR NO. 1 (R.P. p. 139)

STANDARD OF REVIEW

The introduction of the evidence complained of is governed by N.C.G.S. §8C-1, Rule 403 which states in part: Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues or misleading the jury or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. N.C.G.S. §8C-1, Rule 403. Under the balancing test required by the rule, evidence must be "sufficiently similar and not so remote in time as to be more probative than prejudicial." State v. Boyd, 321 N.C. 574, 577, 364 S.E.2d 118, 119 (1988). The Court, in making a

determination as to whether evidence should be admitted, must determine if the proffered evidence is found to be relevant on some issue in the trial, whether or not its relevance would be outweighed by the unfair or prejudicial impact upon the Defendant. Whether or not to exclude evidence under N.C.G.S. §8C-1, Rule 403 is a matter left to the sound discretion of the trial judge. State v. Mason, 315 N.C. 724, 731, 340 S.E.2d 430, 435 (1986).

The Trial Court rulings on Motions to suppress evidence are reviewed de novo on appeal to "determine if the trial court's findings are supported by competent evidence and the findings support the conclusions of law." State v. Pulliam, 139 N.C. App. 437, 439-40, 533 S.E.2d 280, 282 (2000).

ARGUMENT

A. PURPORTED STATEMENTS OF DEFENDANT TO SBI AGENT MARK SHARPE.

On December 29, 2007 the Defendant filed a Motion to suppress oral and written statements allegedly made by the Defendant to SBI Agent Mark Sharpe on June 9 and June 10, 2005 both prior to the Defendant being arrested and after her arrest. A voir dire was conducted concerning the alleged statements of the Defendant which the State intended to introduce through the testimony of Agent Sharpe his report which was marked as State's exhibit 154. (R.P. pp 80-81) The voir dire was conducted regarding the alleged statements. (T. Vol. 2 pp.340-365) The Court overruled the Defendant's objection and denied the Motion to Suppress. (T. Vol. 2 pp.372-376) The Defendant contends the statements were highly prejudicial and were the result of persistent and repeated questioning by skillful law enforcement officers in the absence of counsel, when they knew or

by reasonable diligence should have known the defendant was an alcoholic, was highly medicated and suffered from mental illness. It is a fundamental legal proposition that a confession extracted from a mentally incompetent subject must be suppressed as involuntary under the Fourteenth Amendment. Blackburn v. Alabama, 361 U.S. 199, 205, 80 S. Ct. 274, 279, 4 L.Ed.2d 242 (1960); State v. Ross, 297 N.C. 137, 254 S.E.2d 10 (1979). Likewise, a suspect's mental illness may prevent a knowing and intelligent waiver of the Fifth Amendment right to silence guaranteed by Miranda v. Arizona, 384 U.S. 436, 475, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). It is well established that psychological ploys, threats and promises, fatigue and physical violence combined with many hours of questioning to overcome the Defendant's will may render any admission involuntary and coerced in violation of the Fifth and Fourteenth Amendments to the United States Constitutions. Spano v. New York, 360 U.S. 315, 70 S.Ct. 1202, 3 L.Ed. 2d 1265 (1959); Escobedo v. Illinois, 378 U.S. 478, 84 S.Ct. 1758, 12 L.Ed. 2d 977 (1964); Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966). The Defendant respectfully contends that the various statements which were allowed by the Court to be introduced into evidence at trial were obtained in a manner which violated the Defendant's rights under the Fifth and Fourteenth Amendments to the United States Constitution. While Defendant certainly understands the deference properly afforded trial tribunals on factual determinations, de novo review of the Trial Court's ultimate conclusion strongly suggests that Defendant's acknowledged mental illness alcoholism and use of medication did not receive proper weight. While the Fourteenth Amendment's "competence" inquiry refers to the subject's mental capacity to rationally choose whether or not to make a confession to police, the Fifth Amendment's "knowing and intelligent" inquiry asks whether

the subject actually understood his constitutional rights and made a free and rational choice to waive them. Godinez v. Moran, 509 U.S. 389, 401 n. 12, 113 S. Ct. 2680, 2687, 125 L.Ed.2d 321 (1993). This dual analysis require an evaluation of the totality of the circumstances. Blackburn, supra, 361 U.S. at 206; Edwards v. Arizona, 451 U.S. 477, 486 n. 9, 101 S. Ct. 1880, 68 L.Ed.2d 378 (1981), with "a heavy burden" placed on the prosecution to demonstrate defendant's knowing and intelligent waiver. Miranda, 384 U.S. at 475. Accord, Oregon v. Bradshaw, 462 U.S. 1039, 1044, 103 S. Ct. 2830, 2834, 77 L.Ed.2d 405 (1983).

Based on these principles, Defendant contends the Trial Court's Order denying Defendant's suppression motion was legally erroneous for the following reasons:

a) The Trial Court's Order does not indicate that it considered the effect of her serious mental illness, bipolar disorder, on the suspect's thought processes. Is it respectfully contended that the trial Court denial of Defendant's Motion to Suppress failed to properly consider the Defendant's clear and undisputed mental health problems which coupled with her alcoholism and use of medication prevented her from understanding or waiving her constitutional rights regarding the making of statements. The Court chose instead to deal simply with the legal issue as to whether or not the Defendant was in custody. While important this does not negate the possibility the evidence should still be excluded if in fact the mental condition and the use of prescription medication and/or alcoholism combined to create a situation where the Defendant from a constitutional standpoint was not capable of giving a statement freely and voluntarily. The Courts ruling makes no mention of whether she understood her rights given all of her problems. This coupled with the Defendant being transported by law enforcement to and from the

various places statements were taken, could be confusing to a person possessing all of their faculties let alone a person who has the mental and physical issues of the Defendant. Clearly under the circumstances the Defendant may not have understood she was not in custody or that she had the right to remain silent. The condition of the Defendant at the time is clearly documented in the testimony of those present. Deputy Coffey of the of the Avery County Sherriff's Department testified that in speaking with the Defendant she kept "going around in circles with her statement She said the same thing over and over." (T. Vol. 2 pp. 296-297) The Defendant's son, Joseph Estes, Jr., testified his mother had had emotional and mental problems for a long time and had been in and out of Broughton on several occasions and that she had periods of blackout. She was on "heavy duty medication. The medication that she takes at night which knocks her out." He further advised that she took six or seven other medications that had been prescribed by New River Mental Health where she was continuing treatment. He testified that on the day in question his mother "just did not have it together." (T. Vol. 2 p 308; pp. 320-322) The State offered no evidence to dispute the numerous confinements to the State mental hospital of Broughton, the chronic alcoholism including the use of Listerine as a source of alcohol and/or the use of the medications all of which had devastating effects on the Defendant and her ability to hear, understand and knowingly waive, in a Constitutional sense, her rights with regards to speaking with the officer. The officer who took the statement even acknowledged during his testimony that immediately prior to her arrest he had been advised that she had threatened suicide. Interestingly enough when the Defendant was finally advised of her constitutional rights and offered an attorney she declined to answer any further questions until after she spoke to an attorney. For the reasons set forth,

given the totality of the circumstances the statement should have been excluded and the Motion to Suppress allowed. The failure to grant the Motion to Suppress and/or the failure to make proper findings of fact and conclusions of law regarding the denial constituted prejudicial error.

B. ALLEGED STATEMENTS TO MELISSA BISHOP, KRISTIN BLAIR AND KAREN SHAW.

The State elected to call three witnesses, Melissa Bishop, Kristin Blair and Karen Elizabeth Shaw, all of which had previously been incarcerated with the Defendant. In each instance a voir dire was conducted prior to the testimony being presented to the jury. The proposed testimony and the written statements of each of these witnesses was subject to the Motion to Suppress and Motion in Limine previously filed by the Defendant as discussed above.

In each of the individual witnesses' testimony and statement contained highly prejudicial statements purportedly made by the Defendant to the witnesses which were allowed to be presented to the jury over the strenuous objection of Defendant's counsel. Bishop, a convicted felon, who was in jail for probation violation and who had been charged with assault on the Defendant on July 3 sent a letter to the jailer on July 7 asking to speak with the authorities concerning the alleged statements that the Defendant purportedly had made to her. Her testimony at trial was contradictory; however, given the obvious prejudice to the Defendant of the statements Bishop contended the Defendant made, the contradictory nature of her testimony did not erase the shock her statements gave the jury. (T. Vol.3 pp.747-748, 753-754, 763-764 and 773-774) Blair also an inmate stated that she thought the Defendant was crazy. After having looked through various documents that the Defendant had in her cell including the autopsy report and

various other documents, gave very prejudicial testimony alleging that the Defendant had told her that she would "squash Sam like a bug" that she had "hit the deceased in the head and that he had a bloody nose" and other highly prejudicial statements concerning the Defendant's purported interaction with the deceased and her attempts to clean up the alleged crime scene. (T. Vol.4 pp.775-793) While she acknowledged on cross examination that as a result of giving the testimony she was allowed to go to her doctor's appointment with her mother in plain clothes which although against the rules of the jail and other inconsistencies in her testimony this did little to overcome the prejudice against the Defendant her alleged statements created.

The third witness, Shaw, a convicted felon, who returned to North Carolina after violating her probation in Florida and was allowed to testify about alleged statements of the Defendant which were highly prejudicial. After giving her statement to the officers, she went from having no bond on an extradition warrant to having a bond within a week after giving her statement. Shaw testified that the Defendant had told her that "she began kicking him in the chest and kicked him until he was gasping and that she was going to squash him like a bug."

On cross examination many inconsistencies were established; however, to an untrained jury the inconsistencies in the testimony or outright falsehoods did not overcome the prejudicial effect of the alleged statements.

The argument regarding the capacity of the Defendant to make a statement set forth in A above is incorporated herein by reference. In addition it is respectfully contended that even if the Defendant had the capacity to make a statement, which it is contended she did not, the Court in making a determination on whether to exclude such